

PT 04-19

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 03-PT-0004
v.)	
)	Tax Year 2002
YWCA OF PEORIA)	
)	Dept. Docket # 02-72-171,
Applicant)	175, 177, 103-111

RECOMMENDATION FOR DISPOSITION

Appearances: George Logan, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Sandra Birdsall of Hasselberg, Williams, Grebe & Snodgrass, for YWCA of Peoria.

Synopsis:

The YWCA of Peoria (“applicant”) applied for property tax exemptions for the year 2002 for several parcels of property located in Peoria County. The Department of Revenue (“Department”) denied the exemptions, and the applicant timely protested the Department’s decision. Since then, the applicant has withdrawn its protest for all of the parcels except for one, which is commonly known as Woodbine Terrace, index number 14-31-131-004. The applicant alleges that this property qualifies for an exemption on the basis that it is owned by a charitable organization and used exclusively for charitable purposes. The Department agrees that the applicant is a charitable organization. The

Department contends, however, that the property is not used for charitable purposes. The parties filed a Joint Stipulation of Facts and Join Exhibits as well as supporting briefs. Oral arguments were also heard. After reviewing the documents submitted, it is recommended that the property be granted an exemption.

FINDINGS OF FACT:

1. The applicant operates a continuum of low-income housing. The housing ranges from temporary shelters to permanent housing. (Stip. #5)

2. The applicant provides the following housing services: Outreach Intake Assessment; Emergency Shelters (including a YWCA overnight shelter and YWCA House for Homeless Women and Families that provides shelter for up to six months); YWCA Village (transitional shelter for up to two years); and permanent housing (the Woodbine Terrace Apartments and the YWCA Glen Perry duplexes, which are currently under development). (Stip. #5)

3. The parcels of property on which the applicant's homeless shelter and transitional housing are located are exempt from property taxes. (Stip. #3)

4. The goal of the continuum is to provide safe, decent, and affordable housing to low-income families in Peoria while guiding them to self-sufficiency. As part of the housing, the YWCA provides supportive services at no cost to the participants. These services include job counseling, budget counseling, and parenting classes. (Stip. #5, 21)

5. In the continuum of care, the YWCA does not deny shelter to those women and families who need shelter and apply for it. The applicant's policy is to provide shelter for all its tenants, notwithstanding the written terms of a lease. The applicant's intent is to provide families and individuals with shelter despite their mismanagement of

money and inability to pay. The first order of action is to assist, not to evict, a tenant. (Stip. #6, 21)

6. The Woodbine Terrace apartment complex has 13 units and is operated exclusively as permanent housing for low and very low-income families. The families may live in the apartments in exchange for the monthly payment of rent. The tenants sign leases that provide for the obligation to pay rent. The amount of the rent is calculated based upon Housing and Urban Development (“HUD”) guidelines of affordability. (Stip. #7)

7. The Woodbine Terrace housing is the final step in the continuum to self-sufficiency. Those seeking shelter from the applicant who cannot afford to pay rent are not placed at the Woodbine Terrace housing. Instead, they are placed at other YWCA housing developments that provide free shelter. (Stip. #8)

8. Residency at the Woodbine Terrace housing is open to all who apply and qualify under the Illinois Housing Development Authority leasing criteria, which requires that the tenant’s household earn fifty percent or less of the median income. (Stip. #9)

9. The rent that the applicant charges the tenants at Woodbine Terrace is \$300 for a one-bedroom unit and \$350 for a two-bedroom unit, including all utilities. This is below the market rate, and the rent does not cover the applicant’s operating costs. (Stip. #13)

10. The fair market rate for apartments per the Peoria/Pekin Fair Market Rent Schedule published by HUD is \$596 for a two-bedroom unit and \$440 for a one-bedroom unit. (Stip. #13)

11. The Illinois Housing Development Authority set the rent and approved the form of lease that the applicant uses for the apartments at Woodbine Terrace. (Stip. #13)

12. The rent was calculated using the HUD guidelines for very low-income 3 person families (mother and 2 children). The guidelines are 30% of the median income, which is \$14,000 annually (\$6.73 per hour). (Stip. #14)

13. The applicant does not generate a profit from the rent charged at Woodbine Terrace. The applicant owns and operates the apartment complex solely and exclusively for the purpose of providing charitable services and not for any profit-making venture. The rent proceeds go towards paying the applicant's operating costs, but the rent does not cover the operating expenses. (Stip. #16, 17)

14. The lease for the tenants at Woodbine Terrace permits the applicant to evict the tenants for failure to pay rent. The policy and practice of the applicant is to provide assistance to the tenants who run into financial difficulties paying the rent. The applicant allows the tenants to vary their payment schedules and delay the payment before the applicant will evict the tenants for nonpayment of rent. (Stip. #18)

15. If a tenant is unable to pay the rent at Woodbine Terrace, the tenant will be relocated, with the tenant's consent, to one of the other housing developments in the YWCA continuum where no rent is required. This allows the tenant to continue her development along the path of self-sufficiency. The applicant does not evict a tenant who has no alternative place to go unless the tenant refuses alternative housing. Supportive services are continuously available at no cost. (Stip. #19)

16. Since the inception of its operations at Woodbine Terrace, the applicant has evicted two tenants for nonpayment of rent. One was relocated to the YWCA Village

transitional housing. The other was offered relocation but refused, stating that she had chosen to find alternative housing. Both the offer and the refusal were confirmed in open court as part of the court proceedings in the eviction action. (Stip. #20)

17. The applicant's shelter and housing programs lessen the burdens on the public and the State by providing shelter and educational programs to homeless and impoverished families who would otherwise be reliant on help from the State. It also benefits the community by decreasing the homeless population and providing affordable housing. (Stip. #22)

18. In a study that was conducted in January 2002, it was found that approximately 32% of Peoria households had incomes below \$25,000. The most significant housing problem in Peoria is affordability. (Stip. #23)

19. The applicant is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the Internal Revenue Service. (Stip. #2)

20. The applicant is a not-for-profit corporation. It has no capital, capital stock, or shareholders earning profits or dividends. The applicant derives its funds from grants, donations, and fees, and it uses those funds for charitable purposes. (Stip. #4)

CONCLUSIONS OF LAW:

The provision of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) that allows exemptions for charitable purposes provides in relevant part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity. * * *. (35 ILCS 200/15-65(a)).

Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 139, 156-57 (1968). If the primary use of the property is charitable, then the property is “exclusively used” for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1st Dist. 1982). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill.App.3d 794, 796 (3rd Dist. 1987).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill.2d 263, 271 (1996). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.; City of Chicago v. Department of Revenue, 147 Ill.2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill.App.3d 225, 231 (2nd Dist. 1992)

Two things are necessary for the charitable purposes property exemption: (1) ownership by a charitable organization, and (2) exclusive use for charitable purposes. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286, 291 (1956). In deciding whether the applicant is a charitable organization that actually and exclusively uses the property for charitable purposes, courts consider the following factors:

1. Whether the benefits derived from the property are for an indefinite number of persons;
2. Whether the property benefits the public in such a way as to persuade them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government;

3. Whether the organization has no capital, capital stock or shareholders and earns no profits or dividends;
4. Whether the organization's funds are derived mainly from public and private charity and are held in trust for the objects and purposes expressed in its charter;
5. Whether the organization dispenses charity to all who need and apply for it;
6. Whether the organization does not provide gain or profit in a private sense to any person connected with it;
7. Whether the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it disperses; and
8. Whether the exclusive (primary) use of its property is for charitable purposes.

Methodist Old Peoples Home at 156-57. These factors are not requirements but are guidelines that are considered in assessing an organization's charitable status. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461, 468 (2nd Dist. 1995). The guidelines are not to be applied mechanically or technically, but are to be balanced with an overall focus on whether and how the applicant serves the public interest and lessens the State's burdens. Id. at 469.

In the present case, the Department contends that the applicant does not meet some of these guidelines listed in Methodist Old Peoples Home, *supra*. The Department claims that the benefits derived from the property are not for an indefinite number of persons. It also argues that the applicant places obstacles in the way of those who need and would avail themselves of the charitable benefits that the applicant disperses. The Department concludes that the primary use of the property is not charitable.

The Department maintains that the charity at Woodbine Terrace is not available to all who need and apply for it because the tenants must pay the monthly rental fee. The Department claims that the applicant charges a substantial amount for rent, and anyone who seeks shelter from the applicant will not be placed at Woodbine Terrace unless they can, and do, pay rent. The Department believes that the applicant's policy and practice of requiring the tenants to pay the rent and evicting them if they do not pay are significant obstacles in the way of those seeking the applicant's charitable benefits. The Department notes that if the tenants at Woodbine Terrace are unable to pay the rent, they are "relocated" to other housing that is owned by the applicant. If they do not agree to the relocation, they are evicted. Either way, a tenant who becomes unable to pay the rent is forced to leave Woodbine Terrace.

The applicant argues that it provides shelter to all who need and apply for it, regardless of their ability to pay. The applicant has a continuum of housing for low-income families. The housing ranges from temporary shelters to permanent housing. No one who is in need of housing is denied shelter, and the housing is either free or at below-market rates. The applicant also provides free supportive services for all of its residents in order to help them become self-sufficient. These services include counseling and parenting classes.

According to the applicant, it places no obstacles in the way of those seeking homes and supportive services. Although the YWCA is permitted to evict tenants from Woodbine Terrace for failure to pay rent, the applicant provides assistance to tenants who run into financial difficulties. The applicant allows the tenants to vary the payment schedules or delay the payments, and the applicant continues to provide supportive

services. If necessary, the tenant will be relocated to one of the other housing developments where no rent is charged. The applicant contends that it does not evict but places a tenant in alternative housing, unless the tenant refuses such housing.

The applicant asserts that several cases support its position. In Memorial Child Care v. Department of Revenue, 238 Ill.App.3d 985 (4th Dist. 1992), the court found that a child care center that serves the employees of a tax-exempt charitable hospital also qualified for the exemption. The fees charged for the day-care did not cover the cost of its maintenance and operation, and no net income was derived from the use of the property. The day-care center required a subsidy from the hospital to meet its expenses. It also did not offer free services based on need or for any other reason. The court found that the property was exempt because the use of the property was for a purpose that was reasonably necessary to accomplish the efficient administration of the hospital.

The applicant believes that the instant case is similar to Memorial Child Care because the housing at Woodbine Terrace is reasonably necessary to fulfill the applicant's purpose. The applicant operates a continuum of housing for low-income families at below market rates along with supportive services. Woodbine Terrace is the final step in the applicant's mission. In response, the Department argues that the Memorial Child Care case is distinguishable because that hospital could not operate without the day-care, whereas the mission of the YWCA in this case can be fulfilled without Woodbine Terrace. The Department contends that the YWCA needs a "non-eviction" policy for all of its property, including Woodbine Terrace, in order for it to be considered charitable use.

The applicant responds by maintaining that a “non-eviction” policy for Woodbine Terrace would defeat the purpose of the program. The purpose of the continuum of housing program is to prepare the occupants for living in non-subsidized housing. Paying rent at Woodbine Terrace helps the tenants know what it is like to live in private housing, and it mirrors the regular housing market. If the tenants cannot pay the rent, they are not denied housing. They are simply moved to another location. The applicant claims that it should be entitled to remove its tenants if they do not follow the rules.

The applicant also refers to the following cases: Arts Club of Chicago v. Department of Revenue, 334 Ill.App.3d 235 (1st Dist. 2002) (exemption granted even though dining and party-related benefits were not available to the general public); Lena Community Trust Fund, Inc. v. Department of Revenue, 322 Ill.App.3d 884 (2nd Dist. 2001) (exemption granted even though applicant charged a fee for room rental because fee waiver policy existed, even if it was not published); and Randolph Street Gallery v. Zehnder, 315 Ill.App.3d 1060 (1st Dist. 2000) (failure to advertise fee-waiver policy was not an obstacle placed in the way of those seeking benefits). The Department contends that these cases are distinguishable because all of those applicants had fee-waiver policies.

The applicant argues that under the Department’s analysis, housing can only qualify for the exemption if it is offered for free. The applicant maintains that this interpretation is not the intent of the statute or case law. The factors in Methodist Old Peoples Home are not rigid, and the focus must be on whether the applicant serves the public and lessens the State’s burdens. In this case, the parties stipulated that the applicant lessens the burdens on the public and the State by providing shelter and

educational programs to homeless and impoverished families. It also benefits the community by decreasing the homeless population and providing affordable housing.

The applicant's arguments are persuasive. The guidelines are to be balanced with an overall focus on whether and how the applicant serves the public interest and lessens the State's burdens. DuPage County Board of Review at 469. A housing program that helps low-income families attain and maintain self-sufficiency and become successful citizens is clearly a program that reduces the burdens of government. A housing program that fosters nurturing communities and assists low-income families with developing the skills necessary to maximize their level of independence improves their personal well-being and benefits the public in general.

The applicant's policy to evict tenants who do not pay their rent does not prevent its charity from being dispensed to all who need and apply for it. The applicant works towards keeping the tenants at Woodbine Terrace and provides payment options and free supportive services in order for them to maintain their residence there. If they ultimately are unable to pay the rent, they are given the option to relocate to other housing that the applicant operates. If a tenant does not avail herself of this option, then it cannot be said that she was denied charity. If a tenant refuses to accept the benefits that the applicant offers, then she is refusing the applicant's charitable services.

The applicant does not place obstacles in the way of those tenants who need and want its services. An organization does not lose its charitable status by charging fees as long as the organization accommodates those who are unable to pay. Small v. Pangle, 60 Ill.2d 510, 518 (1975). The applicant does this by providing supportive services and other housing options to those who cannot pay the rent at Woodbine Terrace. The

applicant's policy of removing tenants from Woodbine Terrace for their failure to pay rent is necessary for the applicant to accomplish its goal to help tenants reach self-sufficiency. Requiring the tenants to pay rent prepares them for living in non-subsidized housing. The primary use of the Woodbine Terrace property is charitable, and this property should, therefore, be exempt.

Recommendation:

For the foregoing reasons, it is recommended that the Woodbine Terrace property, index number 14-31-131-004, be exempt.

Linda Olivero
Administrative Law Judge

Enter: August 17, 2004